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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

13 EXAMWORKS, a Delaware limited liability
14 company,

15 Plaintiff,
16 v.
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18 TODD BALDINI, an individual, ABYGAIL
BIRD, an individual, LAWRENCE STUART
GIRARD, an individual, PAMELLA TEJADA,
an individual, ROE CORPORATION, and
DOES 1 through 10,

19 Defendants.
20

Case No. 2:20-CV-00920-KJM-DB

**STIPULATION AND ORDER TO
AMEND RULE 16 SCHEDULING
ORDER**

Judge: Hon. Kimberly J. Mueller
Place: Courtroom 3, 15th floor

1 Plaintiff ExamWorks, LLC, respectfully submits the following stipulation and proposed
2 order requesting that the Court extend the deadline for joinder of parties by 45 days from October
3 31, 2020, to December 10, 2020, to allow ExamWorks to complete third-party discovery and
4 settlement negotiations with third parties in order to avoid, to the extent possible, adding
5 additional parties to this lawsuit. Defendants Todd Baldini, L. Stuart Girard, Pamella Tejada, and
6 Abygail Bird (collectively “Defendants”) stipulate to the relief requested.

7 **A. Background**

8 This action arises out of Defendants’ prior employment with ExamWorks. In Spring
9 2020, Defendants Girard and Tejada resigned from ExamWorks. In the course of investigating
10 their departures, ExamWorks came to believe that they had taken significant information related
11 to ExamWorks’ business, including information that ExamWorks considers to be its trade secrets.
12 Defendants Baldini’s and Bird’s employment was terminated shortly thereafter. This action was
13 filed on May 4, 2020 (ECF No. 1), and on May 8, 2020, the Court granted ExamWorks’ motion
14 and issued a Temporary Restraining Order and Order to Show Cause and ordered expedited
15 discovery (ECF No. 17). On June 3, 2020, the Court granted ExamWorks’ motion for
16 Preliminary Injunction. ECF No. 45.

17 In connection with the Rule 16 scheduling conference held on August 20, 2020,
18 ExamWorks alerted the Court that ExamWorks planned to take third-party discovery of certain
19 business entities affiliated with Defendants. ECF No. 86 (Jnt. Rpt.) at 8. ExamWorks contends
20 that the relevant third parties, including Steven Feinberg, James Tuthill, William (“Bill”) George,
21 Trisha Tuthill, Dunamis Alliance LLC (“Dunamis”), and/or Integrated Pain Management Group
22 (“IPM”), were all connected in one way or another with Defendants’ departure from ExamWorks
23 and were connected to a scheme to misappropriate ExamWorks’ trade secrets. *See also* ECF No.
24 39 (Supp. Br.) at 2–5 (setting forth ExamWork’s position and evidence that the identified third
25 parties were connected with a venture planned by Defendants). A significant purpose of taking
26 third-party discovery was to determine what, if any, ExamWorks information was
27 misappropriated by third parties so that it could be returned to ExamWorks. Lui Decl. ¶ 2.
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1 **B. ExamWorks Diligently Pursued Information from Third Parties.**

2 Even prior to the start of formal discovery in this case, ExamWorks' counsel conferred
 3 with IPM, Bill George, Dunamis, Feinberg, and the Tuthills. Lui Decl. ¶¶ 3–4. ExamWorks
 4 made contact with IPM and Bill George¹'s attorneys as early as May 15, 2020. Lui Decl. ¶ 3.
 5 ExamWorks began communicating with Dunamis's and the Tuthills' attorneys on June 5, 2020.
 6 Lui Decl. ¶ 4. ExamWorks provided notice to Feinberg that he must preserve evidence related to
 7 this suit on May 7, 2020, and again June 4, 2020, but did not receive a response until after he was
 8 served with a subpoena in August after discovery opened following the parties' Rule 26(f)
 9 conference. Lui Decl. ¶ 5. Since discovery formally opened, ExamWorks diligently pursued the
 10 discovery it needed from third parties in order to determine what, if any, additional defendants
 11 need to be added to this action before the joinder deadline set in the Court's Rule 16 order. ECF
 12 No. 87.

13 **IPM/George.** ExamWorks has been diligently negotiating production of information
 14 from IPM and George through their counsel. ExamWorks was able to obtain limited discovery
 15 from IPM in the period from May 2020 through July 2020 through informal negotiation and
 16 cooperation from IPM and George. The parties similarly began negotiating a forensic
 17 remediation protocol around that time to find and return any ExamWorks' information in IPM's
 18 or George's possession to ExamWorks. Lui Decl. ¶ 3. Although significant progress was made
 19 through informal discussions, negotiations slowed in August and ExamWorks served formal
 20 document request subpoenas on IPM and George on September 8, 2020, in order to diligently
 21 pursue the information it needs and avoid the delay that could result in the event a mutual
 22 agreement is not possible. Lui Decl. ¶ 3. On October 1, 2020, ExamWorks followed up with
 23 deposition subpoenas. Lui Decl. ¶ 3. Currently, ExamWorks anticipates finalizing a forensic
 24 protocol shortly; once the protocol is finalized, ExamWorks anticipates subpoena compliance
 25 next month and depositions to follow after document production. Although agreement on search
 26 terms was reached, IPM requested and ExamWorks agreed to provide IPM additional time and an
 27 opportunity to further review the results of the electronic search for responsiveness. Lui Decl. ¶

28 ¹ George is the CEO of IPM. The same counsel represents IPM and George.

1 3. IPM's request will require additional time for compliance, but ExamWorks does not anticipate
 2 requiring Court assistance in enforcing the subpoenas. Lui Decl. ¶ 3. Once depositions are
 3 completed, ExamWorks expects to be able to quickly determine if either IPM or George should
 4 be added as defendants in this case.

5 **Dunamis/Tuthills.** ExamWorks is diligently negotiating with Dunamis, James Tuthill,
 6 and Trisha Tuthill² regarding discovery. ExamWorks served document subpoenas on Dunamis
 7 and James Tuthill on August 12, 2020, and they have since made an initial production of
 8 documents. Lui Decl. ¶ 4. ExamWorks is negotiating a date certain for Dunamis and James
 9 Tuthill to make a supplemental production of documents. ExamWorks negotiated service of
 10 deposition subpoenas on Dunamis, James Tuthill, and Trisha Tuthill through their counsel, and
 11 the subpoenas were served on October 5, 2020. Lui Decl. ¶ 4. Although Dunamis and James
 12 Tuthill produced documents, ExamWorks' review determined that the production is incomplete
 13 and a supplemental production is required. Lui Decl. ¶ 4. Most recently, due to a personal family
 14 emergency, ExamWorks was informed that James Tuthill cannot sit for his deposition until
 15 November and that Mrs. Tuthill cannot provide a date certain yet for her deposition. Once the
 16 supplemental production is completed and depositions occur, ExamWorks expects to be in a
 17 position to expeditiously determine if Dunamis or the Tuthills need to be added as defendants in
 18 this litigation. Lui Decl. ¶ 4.

19 **Feinberg.** ExamWorks is diligently negotiating with Feinberg, through his counsel,
 20 regarding third-party discovery. ExamWorks served a document subpoena on Feinberg on
 21 August 12, 2020, and began interacting regularly with his retained counsel on August 21, 2020.
 22 Lui Decl. ¶ 5. Feinberg made a substantial production of documents in mid-September.
 23 ExamWorks is currently working with his counsel to set a deposition date in the coming weeks
 24 and resolve any outstanding discovery issues attendant to the deposition by the end of the month.
 25 Lui Decl. ¶ 5. ExamWorks may have to file a motion to compel Dr. Feinberg's attendance at a
 26 deposition, and anticipates filing within the next week if agreement is not reached.

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² James Tuthill is the President of Dunamis; his wife is Trisha Tuthill. The same counsel
 represent Mr. and Mrs. Tuthill and Dunamis.

1 As outlined with respect to each third party, ExamWorks has diligently sought
2 information and discovery necessary to determine which, if any, third parties need to be added as
3 defendants. However, before ExamWorks can make an informed decision as to joining additional
4 parties to the suit, it must have complete document productions and depositions of the key third
5 parties. In order to provide sufficient time to make a final determination, ExamWorks
6 respectfully requests an extension of the deadline to join parties so that its negotiations with third
7 parties can be completed.

8 **II. LEGAL STANDARD**

9 The Court may upon a showing of good cause amend a Rule 16(b) scheduling order. Fed.
10 R. Civ. P. 16(b)(4). “Good cause may be found to exist where the moving party shows that it
11 diligently assisted the court with creating a workable scheduling order, that it is unable to comply
12 with the scheduling order’s deadlines due to matters that could not have reasonably been foreseen
13 at the time of the issuance of the scheduling order, and that it was diligent in seeking an
14 amendment once it became apparent that the party could not comply with the scheduling order.”
15 *Kuschner v. Nationwide Credit, Inc.*, 256 F.R.D. 684, 687 (E.D. Cal. 2009).

16 **III. GOOD CAUSE EXISTS TO MODIFY THE RULE 16 ORDER**

17 ExamWorks participated in the initial case management conference and proposed a
18 schedule jointly with Defendants that the Court largely adopted. ECF No. 86 (Jnt. Rpt.) at 11–12;
19 ECF No. 87 (Scheduling Order). *Kuschner*, 256 F.R.D. at 688 (finding that participation in the
20 scheduling conference and proposal of a schedule satisfies the first prong of the good cause
21 inquiry). At the time of the scheduling conference, ExamWorks was in active discussions with
22 counsel for IPM, George, Dunamis, and the Tuthills and anticipated resolving documentary
23 discovery issues in a matter of weeks. Lui Decl. ¶ 3–4, 6. Feinberg had been served with a
24 document subpoena, and there was no indication that his response would be delayed; ultimately,
25 ExamWorks gave a two-week extension to Feinberg and received a substantial production. In
26 addition, ExamWorks is conferring with Feinberg regarding his deposition. Lui Decl. ¶ 5. The
27 October 31, 2020, deadline was proposed in good faith as a reasonable estimate of the amount of
28 time necessary to complete ExamWorks’ discussions with and investigation of third parties.

1 Since the Court adopted the Rule 16 scheduling conference, however, a number of
2 unforeseen circumstances have arisen. Discussions with IPM and George's counsel slowed, and
3 the parties entered into detailed negotiations regarding a forensic inspection and remediation
4 protocol designed to find and return any ExamWorks' information in IPM's or George's
5 possession. Lui Decl. ¶ 3. ExamWorks originally anticipated informally resolving these matters
6 but served both document and deposition subpoenas on IPM and George when the potential for
7 delay became apparent. Lui Decl. ¶ 3. Since serving the subpoenas, substantial progress was
8 made and ExamWorks, IPM, and George are close to a final agreement on a forensic protocol to
9 resolve outstanding discovery issues. Due to IPM's request to review search term results before
10 they are produced to ExamWorks, however, that process will not be completed before October
11 31, 2020. Lui Decl. ¶ 3. Similarly, early cooperation from Dunamis and the Tuthills was
12 stalled—through no one's fault—due to a personal family emergency impacting the Tuthills,
13 making them unavailable for deposition until November. Lui Decl. ¶ 4.

14 ExamWorks is also diligent in seeking a modification to the scheduling order. This
15 request is being made weeks before the October 31, 2020, deadline expires. When it became
16 apparent that the deadline was implicated by events arising in third-party discovery, ExamWorks
17 obtained Defendants' stipulation and sought to amend the order weeks before the deadline
18 expired. *See Hood v. Hartford Life & Acc. Ins. Co.*, 567 F. Supp. 2d 1221, 1226 (E.D. Cal. 2008)
19 (finding good cause where the party seeking modification moved quickly to obtain a stipulation
20 and seek modification of the scheduling order). Additionally, the purpose of extending the
21 deadline is not to delay or otherwise prolong the litigation, but rather to resolve potential claims
22 against third parties without requiring litigation. *See Nelson v. Bennett*, 662 F. Supp. 1324, 1334
23 (E.D. Cal. 1987) (recognizing an “overriding public interest in settling and quieting litigation”).
24 After review of the document productions and the depositions of these third parties, ExamWorks
25 will be able to make informed decisions as to whether any third parties must be joined and will
26 also potentially resolve disputes outside of litigation to the extent possible. Resolving third-party
27 claims outside formal litigation will also expedite resolution of this case by streamlining the
28 issues, limiting the number of parties, and allowing ExamWorks and Defendants to focus on

1 resolving their disputes in an expeditious manner.

2 **IV. CONCLUSION**

3 For the foregoing reasons, ExamWorks respectfully requests that the Court extend the
4 deadline to join parties, deadline by 45 days to December 10, 2020.

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6 Dated: October 9, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP

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8 By: /s/ Robert S. Shwarts

ROBERT S. SHWARTS
9 Attorneys for Plaintiff
ExamWorks, LLC

10 STIPULATED AS TO THE RELIEF REQUESTED:

11 Dated: October 9, 2020

FORD HARRISON LLP

12
13 By: /s/ Daniel C. Chammas
(as authorized on 10/9/2020)

14 DANIEL C. CHAMMAS
15 Attorneys for Defendants Todd Baldini, L.
Stuart Girard, Pamella Tejada, and
Abygail Bird

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18 After considering the foregoing stipulated request to modify the scheduling order in this
19 case, and good cause appearing, the Court GRANTS the request to modify the scheduling order
20 and extends the deadline to join parties to December 10, 2020.

21 IT IS SO ORDERED.

22 DATED: October 21, 2020.

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25 CHIEF UNITED STATES DISTRICT JUDGE
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